

248535

STATE OF SOUTH CAROLINA

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

(Caption of Case)

IN RE:

Southern Bread, LLC Complainant/Petitioner,

v.

South Carolina Electric & Gas Company, Defendant/Respondent

COVER SHEET

DOCKET NUMBER: 2013 - 435 - E

(Please type or print) Submitted by: William Padget, Esquire

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

Emergency Relief demanded in petition

Request for item to be placed on Commission's Agenda expeditiously

Other:

Table with 2 columns: INDUSTRY (Check one) and NATURE OF ACTION (Check all that apply). Includes checkboxes for Electric, Gas, Water, etc., and Affidavit, Motion, Request, etc.

Print Form

Reset Form



William R. Padget, Esquire
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Reply to Columbia Office

January 22, 2014

Via Hand Delivery:

Public Service Commission of South Carolina
Clerk's Office
101 Executive Center Drive
Columbia, SC 29210

RECEIVED
PUBLIC SERVICE COMMISSION
JAN 23 2014

RE: Southern Bread, LLC vs. South Carolina Electric and Gas Company
Case No.: 2013-435-E
Our File No.: 74350-47500

Dear Sir or Madam:

Enclosed please find Complainant's Motion to Extend Time to Respond to Defendant's Motion for Judgment on the Pleadings and Request for Hearing, which we are herewith serving upon the Defendant via hand delivery as evidenced by the attached letter and Certificate of Service. Please file the originals and return a clocked copy to us via our courier.

Should you have any questions, please do not hesitate to contact our office.

Sincerely,

William R. Padget

WRP/cdh

Enclosures

cc: K. Chad Burgess, Esquire
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BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2013-435-E

IN RE:

Southern Bread, LLC)
)
 Complainant/Petitioner,)
)
 v.)
)
 South Carolina Electric & Gas Company,)
)
 Defendant/Respondent.)
 _____)

**COMPLAINANT’S MOTION TO
EXTEND TIME TO RESPOND TO
DEFENDANT’S MOTION
FOR JUDGMENT ON THE
PLEADINGS AND REQUEST
FOR HEARING**

Complainant Southern Bread, LLC, by and through its undersigned counsel, in accordance with 10 S.C. Code Ann. Reg. 103-829(A) and Rule 6 of the South Carolina Rules of Civil Procedure, hereby moves for an order extending the time to reply to Defendant South Carolina Electric & Gas Company’s Motion for Judgment on the Pleadings until after the conclusion of discovery in this matter, which is currently set for February 7, 2014, until February 14, 2014. In support Complainant’s Motion to Extend the Reply deadline, Complainant would respectfully show the following:

1. Defendant SCE&G filed a Motion entitled Motion for Judgment on the Pleadings on January 3, 2014. However, the Motion asks the Commission to go well beyond the pleadings and essentially grant a Motion for Summary Judgment and resolve a number of factual disputes in its favor.

2. A motion for judgment on the pleadings is governed by Rule 12(c) of the South Carolina Rules of Civil Procedure. Generally, “any party may move for judgment on the pleadings under Rule 12(c), SCRCPP. The motion will be sustained only where the pleadings are so defective that, taking all the facts alleged in the pleadings as admitted, no cause of action or defense is stated. A judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgment.” *Lydia v. Horton*, 343 S.C. 376, 540 S.E.2d 102 (Ct. App. 2000). Further, “a judgment on the pleadings is a drastic procedure, and, is therefore not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle her to judgment. Moreover, the pleadings must be construed liberally to do substantial justice between the parties.” *McCurry v. Keith*, 312 S.C. 254, 255, 439 S.E.2d 861, 862 (Ct. App. 1994). It is improper for a court to go beyond the pleadings on a Rule 12(c) motion for judgment on the pleadings. *See Falk v. Sadler*, 341 S.C. 281, 533 S.E.2d 350, 353 (Ct. App. 2000)(“On review of the motion, the court may not consider matters outside the pleadings.”).
3. Defendant SCE&G’s entire motion is based upon alleged knowledge it believes should be imputed to Complainant based upon *documents* SCE&G attaches to its answer. Defendant attempts to summarily discard with Southern Bread’s right to conduct discovery as to the meaning of those documents, and hundreds more produced by the parties, in plain disregard of established South Carolina law affording rights to conduct discovery before granting dispositive motions. *See e.g. Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543

(1991)(“This means . . . that summary judgment must not be granted until the opposing party has had **a full and fair opportunity** to complete discovery.”) (emphasis added).

4. The Hearing Examiner’s Directive dated December 5, 2013 provides for the orderly completion of discovery by February 7, 2014, the submission of testimony by the parties, and sets forth a hearing date April 14, 2014, which has since been changed to April 23, 2014 before the Full Commission.
5. Because Defendant’s Motion for Judgment on the Pleadings seeks to summarily resolve factual controversies in its favor without permitting Southern Bread a full and fair opportunity to conduct discovery and fully respond to the Motion for Judgment on the Pleadings, the Commission should extend the deadline to respond until February 14, 2014.
6. The parties have diligently conducted certain written discovery to date, but Complainant has a Second Set of Interrogatories and Requests for Production to Defendant outstanding and has recently inquired of SCE&G as to whether it will consent to the taking of a Rule 30(b)(6) deposition, but Complainant has not yet received responses to these requests for discovery.
7. The Complainant has good cause for extending the deadline to Reply to Defendants Motion for Judgment on the Pleadings. In considering “good cause” South Carolina courts look to the following factors: (1) the timing of the motion for relief; (2) whether the party asserts meritorious claims; and (3) the degree of prejudice to the opposing party. *See Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989). In weighing these factors in this case, the

factors weigh heavily in favor of extending the deadline to reply. The motion to extend is only days past the original deadline for reply; Southern Bread has asserted meritorious claims for reparations for utility overcharges, which are well founded under South Carolina law; and SCE&G will suffer no prejudice in permitting Southern Bread its full and fair opportunity to conduct discovery on SCE&G's dispositive motion based upon factual disputes between the parties.

For these reasons, Complainant Southern Bread respectfully requests the Commission extend its deadline to reply to Defendant SCE&G's Motion for Judgment on the Pleadings until February 14, 2014. Further, Complainant respectfully requests the Commission conduct a hearing on Defendant SCE&G's Motion for Judgment on the Pleadings.

Respectfully submitted,

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Columbia, South Carolina
January 22, 2014.